IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

ORDER

Balwant Singh vs. Union of India & Ors.
(D.B.Civil Writ Petition No.6618/05)

Date of Judgment:- 13th October, 2006.

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA
HON'BLE JUSTICE SHRI MOHAMMAD RAFIQ

Mr. R.S.Saluja, Advocate for the petitioner.
Mr.M.S.Godara, Advocate for Union of India.

REPORTABLE

BY THE COURT: (PER HON'BLE MOHAMMAD RAFIQ,J.)

This writ petition has been preferred against the judgment dated 26th August, 2004 passed by the Central Administrative Tribunal,Jodhpur Bench, Jodhpur(in short "the Tribunal") whereby original application of the petitioner seeking direction to the Union Government for appointing him on compassionate ground was dismissed. Earlier then approaching the Tribunal, the petitioner had gone through two rounds of

litigation. He filed the first original application before the Tribunal sometime in the month of August, 2001 on the premise that his father while serving the respondents as extra departmental postal agent expired on 10.3.2001 and his application seeking appointment on compassionate ground has been rejected by the respondents without assigning any reasons on 7th August, 2001. The Tribunal by its judgment dated 2.1.2001 rejected the said original application holding that since the petitioner was not dependent on his father, he was not entitled to appointment on compassionate ground. The petitioner challenged the said judgment of the Tribunal was challenged by the petitioner before this Court in D.B.C.Writ Petition No. 4424/01. This writ petition was allowed by this Court vide judgment dated 13th May, 2002. In the judgment, it was held that whether or not a person was solely dependent on his father cannot be decided only on the basis of his marital status particularly in the rural areas. The Tribunal while dismissing the original application did not assign any reason except this and the respondents also have not disclosed the reasons for rejecting the petitioner's prayer for compassionate

appointment. While allowing the writ petition, this Court directed the respondents authorities to consider the application of the petitioner for compassionate appointment afresh and pass a reasoned order if the appointment is refused.

The petitioner thereupon submitted a fresh application before the respondents on 23rd May, 2002 again requesting for compassionate appointment. The respondents by order dated 23rd August, 2002 again rejected his prayer for compassionate appointment but this time by a detailed and speaking order. Appointment was declined on the premise that object of compassionate appointment was to provide immediate help to the dependent of the deceased government servant so as to help them come out of crisis that has befallen the family due to sudden death of their sole breadwinner. In doing so, facts like number of dependents, properties of the family, their liabilities and income and also the fact if any of members of the family was employed elsewhere have to be taken into consideration. It was stated that apart from the widow of the deceased government servant, he was survived

by four sons who were all major and married. The family has no liability nor was it a case where the family was required to pay off the loan taken for treatment of the deceased government servant. The family also held agriculture land which has duly been certified by the revenue authorities. Three of the sons of the deceased government servant were not staying with the family and were self sufficient. There was sufficient income from the agriculture land which has been certified by the Tehsildar(Revenue) to the tune of Rs.45,000/- p.a.. Thus stating, the competent authority again rejected the application of the petitioner for compassionate appointment on review consideration.

Still not satisfied with the rejection of his claim, the petitioner again filed a fresh original application on 23.8.2002 before the Tribunal. The Tribunal by its judgment dated 18.7.2003 directed the respondents that the mere fact that the petitioner was married should not disentitle him from consideration for appointment on compassionate grounds. He should also not be refused compassionate appointment

because only there was some other income and the `haisiyat' of the family was Rs.45,000/-. The respondents were required to see whether the petitioner and his mother needed any financial help on the death of the employee who was the sole breadwinner of the family. It was held that the fact that there were other sons and daughters was not relevant as they were no longer supporting the widow of the deceased. A direction was therefore again issued to the respondents to reconsider the case of the petitioner for compassionate appointment. The petitioner again submitted a detailed application. The matter of the petitioner was then taken to Circle Relaxation Committee for a fresh consideration. The said committee in its meeting held on 13th August, 2003 again rejected the prayer of the petitioner for compassionate appointment by observing as follows :-

> "Shri Aad Ram, Ex-GDS BPM Malkheda expired on 10.3.2001 leaving behind widow, 4 married daughters and 4 married sons. 3 sons are living separately.
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> As per revenue records, the applicant owns one Bighas, 15-5/9 Biswa agriculture land and is deriving income of Rs.6,000/- per annum there from. The immovable property of the widow was assessed as Rs.45,000/- by the Tehsildar. The case

> of Shri Balwant Singh was considered by the CRC on 8/9.8.2002 and did not find indigent, hence rejected. Shri Balwant Singh is qualified up to Matriculation and eligible for consideration for the post of BPM. The Hon'ble CAT has observed that the annual income of the applicant is Rs.20,000/- instead of Rs.45,000/- as stated above. Therefore, financial condition of the applicant was not adequate for leading the normal life of the applicant and his mother.
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> The CRC reconsidered the case in the light of the observations of the Hon'ble CAT and observed that the appointment on compassionate grounds is rendered to provide immediate assistance to the family members of the deceased official who has died in harness leaving the family under grave financial crises. In this case the family is earning Rs.6,000/- through agricultural land and has own house to live in at his village. There is no liability of marriage/education of children. The family has annual income through all other sources which is Rs.20,000/- per annum which is adequate for the widow for her livelihood. Thus, there is no indigency to give appointment to the applicant at this stage. Hence, the case is rejected."

Aforequoted order was conveyed to the petitioner by Superintendent of Post offices, Sriganganagar Division, Sriganganagar vide communication dated 3rd September, 2003. The petitioner then again challenged this order in original application which was dismissed by the learned Tribunal by the impugned judgment dated 26th August, 2004 which is

impugned in the present writ proceedings.

We have heard Mr.R.S.Saluja, learned counsel for the petitioner and Mr.M.S.Godara, learned counsel for the Union of India and perused the record.

Mr.R.S.Saluja, learned counsel for the petitioner argued that rejection of his prayer for compassionate appointment by Circle Relaxation Committee in its meeting held on 13th August, 2003 as conveyed to him by order dated 3rd September, 2003 was not in conformity with the directions earlier issued by the Tribunal in its judgment dated 18th July, 2003. The respondents in rejecting his claim for appointment have reiterated the very same reasons which did not find favour with the learned Tribunal while deciding the aforesaid original application. Mr.R.S.Saluja argued that while remanding the matter to the respondents, the learned Tribunal was very much cognizant of the fact that the petitioner's family had the income of Rs.45,000/- per annum yet the very same reason of income has again weighed with the authorities for declining

compassionate appointment to the petitioner. This according to him amounted to error apparent on the face of record warranting interference by this Court. Mr.R.S.Saluja argued that the learned Tribunal was not justified in rejecting the original application merely on the basis of pleadings in para 4.6 of original application that the post in question was reserved for Scheduled Tribe as the petitioner could have been considered for appointment in any other adjoining villages where the post was lying vacant. He argued that there was no material with the respondents to hold that the family of the petitioner was not in an indigent condition. Learned counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court in Govind Prakash Verma vs. Life Insurance Corporation of India & Ors., reported in (2005) 10 S.C.C. p.289 in support of his contention and argued that the Hon'ble Supreme Court in the said case directed for giving compassionate appointment to the dependent of a deceased employee in whose case the employer had declined to do so on the ground that his elder brother was gainfully employed and that the family pension was being paid to the widow of the deceased.

On the other hand, Mr. M.S.Godara, learned counsel for the respondents argued that the case of the petitioner has been considered on as many as three occasions and on each of time, with due application of mind. He while reiterating the stand taken by the department before the Tribunal argued that the family of the petitioner cannot be considered to be in indigent condition inasmuch as it had sufficient income and resources to maintain itself and there were other three sons of the deceased employee who were all earning and self sufficient. He therefore argued that the judgment passed by the learned Tribunal does not suffer from any error apparent on the face of record so as to warrant interference by this Court and the writ petition deserves to be dismissed.

We have given our earnest consideration to rival arguments advanced by both the learned counsel and perused the record.

Present one is a peculiar case where the prayer of the petitioner for compassionate appointment was rejected by

the respondents not once but on as many as three occasions. Once it was considered and rejected and then again considered under the direction of this Court vide judgment dated 13.5.2002. When the respondents again rejected the prayer of the petitioner, the Tribunal vide its judgment dated 18.7.2003 again directed them to reconsider his claim and decide it afresh. But the respondents yet again by their order dated 29.8.2003/3.9.2003 rejected the prayer of the petitioner. He again approached the Tribunal which vide its judgment dated 26th August, 2004 rejected the original application while upholding the order passed by the respondents. This is indeed an uncommon feature of this case that the respondents upon being repeatedly required to reconsider the case every time reiterated their decision almost on the similar grounds although in their last order they have dealt with the matter in rather greater details. Now that the petitioner is again before this Court challenging the order of rejection of his prayer for appointment and dismissal of his original application by the Tribunal, we because of peculiarity of this case consider it appropriate to deal with this matter at some length.

The first and foremost question that needs to be examined is as to what is the object of giving compassionate appointment to the dependents of government servants dying while in service and what corresponding rights does it confer on them to claim such appointment and how far and up to what extent such dependents can seek the enforcement of this right. This question has been engaging attention of the Hon'ble Supreme Court in very many cases for quite sometime in the past. But the approach of law on the question of compassionate appointment has undergone a complete change since the origin of this right in service jurisprudence. Sushma Gosain & Ors. vs. Union of India & Ors., 1989(4) SCC p.468 was perhaps the earliest judgment of the Apex Court on the subject in which direction to provide compassionate appointment to the widow of the deceased government servant was backed by a further direction to create a supernumerary post to accommodate her. There has however been a steep come down in the position of law entitling dependents to compassionate appointment from that era to now. Following the Apex Court judgment in Sushma Gosain(supra), when such similar judgments were passed by

some of the High Courts, the Hon'ble Supreme Court while considering this question in Umesh Kumar Nagpal vs. State of Haryana, (1994) 4 S.C.C. p.138 observed as under :-

> "We have not been in a position to appreciate judgments of some of the High Courts which have justified and even directed compassionate employment either as a matter of course or in posts above Classes III and IV. We are also dismayed to find that the decision of this Court in Sushma Gosain v. Union of India has been misinterpreted to the point of distortion. The decision does not justify compassionate employment either as a matter of course or in employment in posts above Classes III and IV."(emphasis supplied)

In the aforesaid case, their Lordships further observed that :

> "The only ground which can justify compassionate employment is the penurious condition of the deceased's family. Neither the qualifications of his dependent nor the post which he held is relevant."

Elaborately commenting upon the object of compassionate appointment, their Lordships in Umesh Kumar Nagpal further observed as under :-

> "It appears that there has been a good deal of obfuscation on the issue. As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the

Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule, which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependents of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependents of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provisions of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependent of the deceased employee in such posts has a rational nexus with the object sought to be

> achieved, viz., relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned.
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> 3. Unmindful of this legal position, some Governments and public authorities have been offering compassionate employment sometimes as a matter of course irrespective of the financial condition of the family of the deceased and sometimes even in posts above Classes III and IV. That is legally impermissible."

Life Insurance Corporation of India vs. Asha Ramchandra Ambekar & Anr. , 1994(2) S.C.C. p.718 was also one of the earlier decisions available on the point wherein their Lordships were considering a case in which one of the sons of the deceased employee was already in service and application was made for compassionate appointment by his second son. The Life Insurance Corporation rejected the prayer on consideration of this fact but the High Court directed for compassionate appointment observing that so far as the

payment of dues paid by the employer to the family was concerned, they were the lawful dues and appointment could not be declined because another member of the family was in the employment. In those facts, it was observed by the Hon'ble Supreme Court as follows :-

> "The courts should endeavor to find out whether a particular case in which sympathetic considerations are to be weighed falls within the scope of law. Disregardful of law, however hard the case may be, it should never be done."

Question as to what is the object for grant of compassionate appointment also fell for consideration of Hon'ble Supreme Court in Director of Education(Secondary) vs. Pushpendra Kumar & Ors., (1998) 5 S.C.C. p.192. In para 8 of which, their Lordships observed as under :-

> "The object underlying a provision for grant of compassionate employment is to enable the family of the deceased employee to tide over the sudden crisis resulting due to death of the bread-earner which has left the family in penury and without any means of livelihood. Out of pure humanitarian consideration and having regard to the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provisions is made for giving gainful appointment to one of the dependents of the deceased who may be eligible for such appointment. Such a provision makes a departure from the general provisions

> providing for appointment on the post by following a particular procedure. Since such a provision enables appointment being made without following the said exception cannot subsume the main provision to which it is an exception and thereby nullify the main provision by taking away completely the right conferred by the main provision. Care has, therefore, to be taken that a provision for grant of compassionate employment, which is in the nature of an exception to the general provisions does not unduly interfere with the right of other persons who are eligible for appointment to seek employment against the post which would have been available to them, but for the provision enabling appointment being made on compassionate grounds of the dependant of a deceased employee."

Strictly speaking, the claim of compassionate appointment cannot be upheld on the touchstone of Articles 14 and 16 of the Constitution of India. But the Courts have held that if such appointment is given to one of the dependents of the deceased government servant according to the rules framed by the government, it would not be violative of Articles 14 and 16 of the Constitution of India. It is intended to mitigate the hardship due to death of bread earner of the family and sudden misery faced by the members of the family of such employee who had served the government. Their Lordships of the Hon'ble Supreme Court in State of Haryana vs. Rani Devi &

Anr., (1996) 5 S.C.C. p.308 sounded the note of caution on the question of framing rules on the subject as under :-

> "while framing any rule in respect of appointment on compassioante ground the authorities have to be conscious of the fact that this right which is being extended to a dependant of the deceased employee is an exception to the right granted to the citizen under Articles 14 and 16 of the Constitution. As such there should be a proper check and balance. Of late, it appears the right to be appointed on compassioante ground is being claimed as a right of inheritance irrespective of the nature of service rendered by the deceased employee."

In State of H.P. & Anr. vs. Jafali Devi, 1997(5) SCC p.301 also the government declined to give compassionate appointment to the son of the deceased employee on the ground that his another son was already in government service but the High Court setting aside such order directed reconsideration of the case. It was in those facts that their Lordships of the Hon'ble Supreme Court while observing that the courts cannot confer benediction impelled by sympathetic consideration held that the Courts should ensure to find out whether a particular case in which sympathetic considerations are to be weighed fall within the scope of law and set aside the judgment of the High Court.

Question as to the object of compassionate appointment again fell for consideration of the Hon'ble Supreme Court in Managing Director, MMTC Ltd., New Delhi & Anr. vs. Pramoda Dei, (1997) 11 SCC p.390. While reiterating the view taken in Umesh Kumar Nagpal(supra), it was held that "the object of compassionate appointment is to enable the penurious family of the deceased employee to tide over the sudden financial crisis and is not to provide employment. Mere death of an employee does not entitle his family to compassionate appointment."

Reiterating this very view, their Lordships of the Apex Court in Jagdish Prasad vs. State of Bihar & Anr., (1996) 1 S.C.C.p.301 observed that " the very object of appointment of a dependent of the deceased employees who die in harness is to relieve unexpected immediate hardship and distress caused to the family by sudden demise of the earning member of the family." In this case, age of son of the deceased employee at the time of his death was only four years and he applied for compassionate appointment on attaining majority. It was

observed by their Lordships that " if that contention is accepted, it amounts to another mode of recruitment of the dependent of a deceased government servant which cannot be encouraged, de hors the recruitment rules."

Similarly in the case of Haryana State Electricity Board vs. Naresh Tanwar & Anr., (1996) 8 S.C.C. p.23 their Lordships of Hon'ble Supreme Court again enunciated the very same law by observing that " the very object of appointment of dependent of deceased employee who died in harness is to relieve immediate hardship and distress caused to the family by sudden demise of the earning member of the family and such consideration cannot be kept binding for years."

Delay has been always accepted as one of the relevant considerations for declining the prayer for appointment on compassionate grounds. The Apex Court has expressed itself in favour of refusing such appointment if a sufficiently long time period has expired after the death of the employee.

Application for compassionate appointment in

Director, Defence Metal Research Laboratory & Anr. vs. G.Murli, (2003) 9 SCC p.247 was made 18 years after the death of the government servant. The Central Administrative Tribunal rejected the application on the ground that since the family has been managing somehow for last 18 years, as such the case was not covered under the instructions issued by the government. The High Court however reversed the judgment of the Tribunal and directed for appointment and held that even if the post was not available, this was not an excuse and a post had to be created if not available. The Hon'ble Supreme Court in the facts of that case observed as under -

> "We find the High Court's order to be unsustainable. There has been a failure to appreciate what the Tribunal had rightly taken into account, namely, that the writ petitioner and his family had coped without the compassionate appointment for about eighteen years. There was no warrant in such circumstances for directing the writ petitioner's appointment on compassionate grounds and that too with the direction to the respondents to the writ petition to create a post to accommodate him."

In Haryana State Electricity Board vs. Krishna Devi, reported in (2002) 10 S.C.C. p. 246, the Hon'ble Supreme Court set aside the judgment passed by the High Court granting

compassionate appointment on the ground of application having been made after eight years of the death of the employee and observed that compassionate appointment cannot be claimed as a matter of right.

In Union of India & Ors. vs. Bhagwan Singh, (1995) 6 SCC p.476 application for compassionate appointment was made 20 years after the death of the employee. The Hon'ble Supreme Court while reversing the judgment of the Central Administrative Tribunal held that "the plea of compassionate employment is not to enable the family to tide over the sudden crisis or distress which resulted long ago". This judgment was later followed in State of U.P. & Ors. vs. Paras Nath, (1998) 2 SCC p.412 wherein again their Lordships observed that "the purpose of providing employment to a dependent of a government servant dying in harness in preference to anybody else, is to mitigate the hardship caused to the family of the employee on account of his unexpected death while still in service." Their Lordships therefore observed that "none of these considerations can operate when the application is made

after a long period of time such as seventeen years in the present case."

In Haryana State Electricity Board & Anr. vs. Hakim Singh, (1997) 8 S.C.C p.85 wherein minor child of the deceased employee on attaining the age of majority after fourteen years of his death applied for compassionate appointment which plea eventually found favour with the High Court which directed for compassionate appointment . The Hon'ble Supreme Court reversed the judgment of the High Court holding that "the object of the provisions should not be forgotten that it is to give succor to the family to tide over the sudden financial crisis befallen the dependents on account of the untimely demise of its sole earning member."

Similarly, the Hon'ble Supreme Court declined the prayer for compassionate appointment in Sanjay Kumar vs. State of Bihar & Ors., (2000) 7 S.C.C. p.192 in which case the petitioner was ten years old when his mother died while serving the government . Their Lordships held that "there cannot be

reservation of a vacancy till such time as the petitioner becomes a major after a number of years, unless there is some specific provision. The very basis of compassionate appointment is to see that the family gets immediate relief."

Appointment on compassionate grounds has always been held to be an exception to the general rule of making appointments only by regular mode of recruitment where all those eligible are allowed to complete for appointment against available vacancies. This exception however is subject to certain limitations which have by now come to be evolved by catena of Supreme Court judgments and some of them are to be found engrafted into relevant rules or the instructions of the governments and other public sectors organizations on the subject.

In State of Manipur vs. Md. Rajaodin, (2003) 7 S.C.C.p. 511, the application for compassionate appointment was made by the dependent seventeen years after the death of the employee on the ground that he was only ten years old

when his father died. The Hon'ble Supreme Court on consideration of the number of previous case laws on the point held that "As it is in the nature of exception to the general provisions it cannot substitute the provision to which it is an exception and thereby nullify the main provision by taking away completely the right conferred by the main provision."

The Hon'ble Supreme Court in National Hydroelectric Power Corporation & Anr. vs. Nanak Chand & Anr., (2004) 12 S.C.C. p.487 while recapitulating the previous case law on the subject again reiterated the very same position of law by observing that "the appointment on compassionate ground is not another source of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of the death of employee while in service leaving his family without any means of livelihood. In such cases the object is to enable the family to get over sudden financial crisis." While holding that direction for compassionate appointment could not be given by the High Court after enormous delay, the Hon'ble Apex Court set aside the

judgment of the High Court under challenge.

While considering validity of the order refusing to provide compassionate appointment to dependent of deceased government servant on the ground that there was a ceiling of 5% per cent for such appointments and the quota reserved therefor having already been exhausted, appointment could not be given, their Lordships of the Hon'ble Supreme Court in Union of India vs. Joginder Sharma, (2002) 8 SCC p.65 in para 4 of the judgment observed as under :-

> "If under the Scheme in force any such claim for compassionate appointment can be countenanced only as against a specified number of vacancies arising, in this case 5 per cent, which ceiling it is claimed came to be imposed in view of certain observations emanating from this Court in an earlier decision, the Tribunal or the High Court cannot compel the department concerned to relax the ceiling and appoint a person. Since this method of appointment is in deviation of the normal recruitment process under the rules, where people are waiting in the queue indefinitely, the policy laid down by the Government regarding such appointment should not be departed from by the courts/tribunals by issuing directions for relaxations, merely on account of sympathetic considerations or hardships of the person concerned."

In a recently delivered judgment again the Hon'ble

Supreme Court in State of J&K & Ors. vs. Sajad Ahmed Mir,(2006) 5 SCC p.766 the Hon'ble Supreme Court observed as to the nature of the appointment on compassionate ground in the following terms :-

> "11.We may also observe that when the Division Bench of the High Court was considering the case of the applicant holding that he had sought "compassion", the Bench ought to have considered the larger issue as well and it is that such an appointment is an exception to the general rule. Normally, an employment in the Government or other public sectors should be open to all eligible candidates who can come forward to apply and compete with each other. It is in consonance with Article 14 of the Constitution. On the basis of competitive merits, an appointment should be made to public office. This general rule should not be departed from except where compelling circumstances demand, such as, death of the sole breadwinner and likelihood of the family suffering because of the setback. Once it is proved that in spite of the death of the breadwinner, the family survived and substantial period is over, there is no necessity to say "goodbye" to the normal rule of appointment and to show favour to one at the cost of the interests of several others ignoring the mandate of Article 14 of the Constitution."

This very view was taken by the Hon'ble Supreme Court in Union of India vs. Joginder Sharma, (2002) 8 S.C.C. p.65 wherein it was held that "compassionate appointment is intended to enable the family of the deceased employee to tide

over the sudden crisis resulting due to death of the sole breadwinner, who died leaving the family in penury and without sufficient means of livelihood."

In Punjab National Bank & Ors. vs. Ashwini Kumar Taneja, (2004) 7 S.C.C. p.265 the High Court had allowed the writ petition and directed the bank to forward the case of the dependent for compassionate appointment and provide him suitable job. The said judgment was however reversed by the Hon'ble Supreme Court by observing that "the claim of the person concerned for appointment on compassionate ground is based on the premises that he was dependent on the deceased employee. Strictly, this claim cannot be upheld on the touchstone of Article 14 and 16 of the Constitution of India. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the State and dies while in service." Their Lordships further observed that "appointment on compassionate ground cannot be claimed as a matter of right". Such appointment can be made in accordance with the rules,

regulations or administrative instructions taking into consideration the financial condition of the family of the deceased employee. The appointment on compassionate ground in that case was refused by the bank on consideration of the fact that there was no financial hardship to the family of the deceased and they had received substantial amount after the death of the employee.

Similarly in SAIL & Anr. vs. Awadhesh Singh & Ors., (2001) 10 S.C.C. p.621 wherein considering the provisions in the memorandum of agreement for compassionate appointment on death of an employee but not if some other dependent was already in service the High Court directed the authorities to consider the case of the dependent for compassionate appointment. The Hon'ble Apex Court however reversed the judgment holding that very purpose for which such claim was evolved would get frustrated if a claim on priority basis is made by a dependent of deceased notwithstanding the fact that other dependent of the deceased is already in service.

In Commissioner of Public Instructions & ors. vs. K.R.Vishwanath,(2005) 7 S.C.C. p.206, their Lordships of the Hon'ble Supreme Court observed that "provision for ground of compassionate employment which is in the nature of an exception to the general provisions does not unduly interfere with the right of those other persons who are eligible for appointment to seek appointment against the post which would have been available, but for the provision enabling appointment being made on compassionate grounds of the dependent of the deceased employee."

Discussion made above would clearly demonstrate that consistent approach of the law on the question of compassionate appointment has been that this is an exception to the general rule but nonetheless this exception cannot be taken as conferring any corresponding right on the dependents of the deceased government servant to claim such appointment in every situation. This cannot become a perennial source of recruitment in preference to regular mode of recruitment wherein appointments are made by providing opportunity to all

eligible candidates to compete against the available vacancies. Mere death of an employee does not by itself give rise to a right in favour of his dependents to claim compassionate employment. It is a mere concession out of benevolence and compassion by the employer extended in only appropriate and deserving cases where the dependents are faced with sudden crisis of survival. What are those appropriate and deserving cases, would have to be decided on the basis of rules and/or guidelines of the government/the employer and the law evolved by judicial pronouncements on the subject. Such an appointment is intended to be provided not only in deserving cases but also at the earliest opportune time. If a sufficiently long time period has elapsed between the date of death and request of the dependent to claim such appointment, that by itself may be a valid ground for refusing appointment on compassionate grounds. The government/the employer upon receipt of such request would be well within its right to consider the financial status of the family including the fact whether or not any other member of the family was already employed elsewhere, their landed property and income derived

therefrom, other sources of income, terminal benefits which have been received by the family, the amount of family pension as also the fact as to how many persons the deceased employee was supporting and other liabilities of the family. The Government/the employer would also be entitled to consider as to if by sudden departure of the breadwinner of the family, the dependents have been plunged into acute financial crisis so grave as to be not able to maintain themselves on their own which is what is called as indigent condition of the family. These and the other considerations of the like nature therefore play a significant role in the making of decision by the government/the employer to provide compassionate appointment to one of the members of the family so as to enable them to come out the sudden crisis caused by unexpected and immediate hardship.

So far as the judgment cited by Mr.R.S.Saluja, learned counsel for the petitioner in Govind Prakash Verma (supra) is concerned, that turned out on its own facts. The Hon'ble Supreme Court found that the enquiry made by an

officer of the Life Insurance Corporation was sketchy in which it was stated that family own a piece of land and one of its members was cultivating the same but this statement was contradicted by the elder brother of the applicant who stated that he was working as painter. The Hon'ble Supreme Court found that nothing was indicated in the enquiry report as to whether he was employed as painter and on that basis, his gainful employment could not be acted upon. It was in that context the Hon'ble Supreme Court directed reconsideration of the request of the appellant before the High Court.

Present one is a case where reconsideration of the case of the petitioner has been directed twice, once by this Court and then by the Tribunal and his request at each of time has been rejected by the authorities. Thus, the petitioner has received three considerations. What we are called upon to consider is as to whether the reasons assigned by the respondents in refusing to provide compassionate appointment to the petitioner were irrelevant or were not germane to the facts of the present case or further whether the refusal to grant

compassionate appointment to the petitioner was based on any extraneous considerations. The reasons in the present case as assigned in the order dated 23rd October, 2002 can be summarized as (1) object of compassionate appointment was to provide immediate assistance to family so as to enable them to tide over the sudden crisis; (2) such appointment could be provided keeping in view the number of dependents, property of the family, their liabilities and income and number of earning members of the family; (3) Four sons of the widow of the deceased were major and were married and there was no liability of the life; (4) the family was not required to pay any loan it might have taken for treatment of the deceased employee; (5) three sons of the deceased employee were residing independently away from the family and were not dependent on the widow of the deceased; and (7) the family had sufficient income from the agricultural field which the Tehsildar has certified to be Rs. 45,000/- per annum. It was on consideration of all these facts that the respondents finally rejected the request of the petitioner for compassionate

appointment holding that the family was not in indigent condition.

Courts can merely direct reconsideration of the request for compassionate appointment but cannot by a positive direction require the employer to give appointment. If however upon reconsideration of the matter, the employer has again rejected the prayer for compassionate appointment, no further direction to consider the case of the dependent yet again can be given unless reasons assigned for rejecting the prayer are totally outrageous, irrelevant and extraneous. On consideration of the entire matter, we find that the case of the petitioner has received fair consideration and the reasons assigned by the respondents in refusing to grant compassionate appointment to the petitioner cannot be described as irrelevant or extraneous. In our considered opinion, the judgment passed by the Tribunal does not suffer from any error apparent on the face of record so as to call for any interference by this Court.

In view of what has been discussed above, we do

not find any merit in this writ petition. The same is hereby dismissed with no order as to costs.

(MOHAMMAD RAFIQ),J. **(S.N.JHA),C.J.**

Aditya/-